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REPUBLIC OF SOUTH AFRICA

GOVERNMENT IMMOVABLE ASSET MANAGEMENT BILL

(As amended by the Portfolio Committee on Public Works (National Assembly))
(The English text is the official text of the Bill)

(MINISTER OF PUBLIC WORKS)

[B 1B—2006]

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BILL

To provide for a uniform framework for the management of an immovable asset that is held or used by a national or provincial department; to ensure the coordination of the use of an immovable asset with the service delivery objectives of a national or provincial department; to provide for issuing of guidelines and minimum standards in respect of immovable asset management by a national or provincial department; and to provide for matters incidental thereto.

BE IT ENACTED by the Parliament of the Republic of South Africa, as follows:—

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Definitions

1. In this Act, unless the context otherwise indicates—

"accounting officer" means, in relation to a national or a provincial department, a person mentioned in section 36 of the PFMA and includes any person acting as the accounting officer;

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"acquire", in relation to an immovable asset—

(a) for national government, means acquisition through construction, purchase, lease, acceptance of a gift, expropriation, exchange or transfer of custodianship between custodians in that sphere of government; and

(b) for provincial government, means "acquire" as defined in the relevant provincial land administration law or trasfer of custodianship between custodians in that sphere of government;

"best practice" means a desirable and appropriate standard, process, procedure, method or system in relation to immovable asset management;

"best value for money" means the optimisation of the return on investment in respect of an immovable asset in relation to functional, financial, economic and social return, wherever possible;

"custodian" means a national or provincial department referred to in section 4 represented by the Minister of such national department, Premier of a province or MEC of such provincial department, so designated by the Premier of that province;

"custodianship" means the execution of functions contemplated in section 4(2);

"disposal" means any disposal contemplated in the State Land Disposal Act, 1961 (Act No. 48 of 1961) or a provincial land administration law;

"immovable asset" means any immovable asset acquired or owned by government, excluding any right contemplated in the Mineral and Petroleum Resources Development Act, 2002 (Act No. 28 of 2002);

"immovable asset management" means those management processes which ensure that the value of an immovable asset is optimised throughout its life cycle;

"immovable asset management guidelines" means the guidelines published by the Minister in terms of section 19 which a custodian or user may use to develop its immovable asset management plan;

"immovable asset management plan" means a custodian immovable asset management plan or a user immovable asset management plan, as the case may be, prepared in accordance with section 6;

"life cycle" means the period during which a custodian or user expects to derive benefits from the control or use of an immovable asset;

"MEC" means a Member of the Executive Council;

"Minister" means the Minister responsible for Public Works;

"organ of state" means any department of state or administration contemplated in paragraph *(a)* of section 239 of the Constitution of the Republic of South Africa, of 1996, but excluding the department or administration in the local sphere of government;

"PFMA" means the Public Finance Management Act, 1999 (Act No. 1 of 1999);

"portfolio" means the total extent of immovable assets controlled or used by a national or provincial department;

"prescribe" means prescribe by regulation;

"provincial land administration law" means the Acts listed in the Schedule;

"standard" means the minimum standard, process, procedure, method or system in relation to immovable asset management and the life cycle of immovable assets, issued in terms of section 19;

"strategic plan" means the strategic plan of a custodian or user as prescribed in terms of the Public Service Act, 1994 (Proclamation R103 of 1994) and the PFMA;

"surplus" in relation to an immovable asset, means that the immovable asset no longer supports the service delivery objectives of a user;

"this Act" includes any regulation or standard issued by the Minister;

"treasury" means the National Treasury or a provincial treasury, as defined in section 1 of the PFMA; and

"user" means a national or provincial department that uses or intends to use an immovable asset in support of its service delivery objectives and includes a custodian in relation to an immovable asset that it occupies or intends to occupy, represented by the Minister of such national department, Premier of a province or MEC of such provincial department, so designated by the Premier of that province.

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Application of Act

2. This Act applies to organs of state.

Objects of Act

3. The objects of this Act are to—

(a) provide a uniform immovable asset management framework to promote accountability and transparency within government;

(b) ensure effective immovable asset management within government;

(c) ensure coordination of the use of immovable assets with service delivery objects of a national or provincial department and the efficient utilisation of immovable assets;

(d) optimise the cost of service delivery by—

(i) ensuring accountability for capital and recurrent works;

(ii) the acquisition, reuse and disposal of an immovable asset;

(iii) the maintenance of existing immovable assets;

(iv) protecting the environment and the cultural and historic heritage; and

(v) improving health and safety in the working environment.

Relationship between and responsibility of custodian and user

4. (1) The departments managed by the following executive organs of state within the national and provincial spheres of government are custodians:

(a) The Minister, in relation to immovable assets that vest in the national government, except in cases where custodial functions were assigned to other Ministers by virtue of legislation before the commencement of this Act;

(b) subject to subsection (5), the Minister responsible for Land Affairs, in relation to immovable assets acquired for land reform, as well as immovable assets that vest in the national government and are situated within the former homelands, except in cases where custodial functions in respect of those areas were assigned to another Minister by virtue of specific legislation before the commencement of this Act; and

(c) a Premier of a province or an MEC designated by the Premier, in relation to an immovable asset that vests in a provincial government.

(2) A custodian—

(a) acts as the caretaker in relation to an immovable asset of which it is the custodian;

(b) may—

(i) in the case of a national department, acquire and manage an immovable asset as contemplated in section 13 and, subject to the State Land Disposal Act, 1961 (Act No. 48 of 1961), or any other Act regulating the disposal of state land, dispose of that immovable asset;

(ii) in the case of a provincial department, subject to the relevant provincial land administration law, acquire, manage and dispose of an immovable asset; and

(c) is, subject to section 18, liable for any action or omission in relation to an immovable asset of which it is the custodian, excluding an act or omission in good faith.

(3) The Minister or MEC of a user is—

(a) subject to section 18, responsible for the performance of the functions assigned to it by this Act or any agreement with the custodian of the immovable asset that it occupies; and

(b) liable for any act or omission in relation to the immovable asset concerned, excluding an act or omission in good faith.

(4) A custodian and user must settle any dispute between them in the manner contemplated in the Intergovernmental Relations Framework Act, 2005 (Act No. 13 of 2005).

(5) *(a)* Notwithstanding section 19(1), the accounting officer of a user is the designated custodian in the case of a public private partnership relating to an immovable asset, from the date of signature of the public private partnership concession agreement and for the duration thereof.

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(b) Upon termination or expiry of the term of the public private partnership concession agreement, the ownership or custodianship of that immovable asset is transferred or reverts to the custodian referred to in section 4(1).

(6) Despite subsection (1)*(b)* and section 38 of the PFMA, the Minister performs the custodial functions referred to in section 13(1), (2) and (3)*(a)* in relation to immovable assets situated in the former homelands and occupied by a national department in support of its service delivery objectives.

(7) For the purposes of this section, the words "former homeland" bear the same meaning assigned to "homeland" in Schedule 6 to the Constitution.

Principles of immovable asset management

5. (1) The following are principles of immovable asset management:

(a) An immovable asset must be used efficiently and becomes surplus to a user if it does not support its service delivery objectives at an efficient level and if it cannot be upgraded to that level;

(b) to minimise the demand for immovable assets, alternative service delivery methods that do not require immovable assets must be identified and considered;

(c) in relation to an acquisition, it must be considered whether—

(i) a non-immovable asset solution is viable;

(ii) an immovable asset currently used by the state is adequate to meet a change in its service delivery objectives; and

(iii) the cost of the immovable asset as well as operational and maintenance cost throughout its life cycle justifies its acquisition in relation to the cost of the service;

(d) immovable assets that are currently used must be kept operational to function in a manner that supports efficient service delivery;

(e) when an immovable asset is acquired or disposed of best value for money must be realised;

(f) in relation to a disposal, the custodian must consider whether the immovable asset concerned can be used—

(i) by another user or jointly by different users;

(ii) in relation to social development initiatives of government; and

(iii) in relation to government's socio-economic objectives, including land reform, black economic empowerment, alleviation of poverty, job creation and the redistribution of wealth.

(2) The Minister may, by notice in the *Gazette*, identify additional principles of immovable asset management.

(3) When the Minister issues a notice referred to in subsection (2), the provisions of section 20(2), (3) and (4) apply with the necessary changes.

Immovable asset management plan

6. (1) Subject to this Act and as part of its strategic planning process contemplated in the Public Service Regulations, 2001, the accounting officer of—

(a) a custodian must—

(i) prepare an immovable asset management plan, to be known as a custodian immovable asset management plan, in relation to all the immovable assets which are in its custody;

(ii) prepare a user immovable asset management plan, which relates to all the immovable assets which the custodian uses or intends to use in support of its own service delivery objectives; and

(b) a user must prepare an immovable asset management plan to be known as a user immovable asset management plan in relation to the immovable assets which that user uses or intends to use.

(2) When preparing a custodian or user immovable asset management plan, the accounting officer must—

(a) meet the objects of this Act;

(b) adhere to the principles contemplated in section 5;

(c) adhere to any regulations published in terms of section 20; and

(d) adhere to standards issued in terms of section 19.

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Minimum contents of custodian immovable asset management plan

7. A custodian immovable asset management plan must consist of at least—

(a) a portfolio strategy and management plan;

(b) a management plan for each immovable asset throughout its life cycle;

(c) a performance assessment of the immovable asset;

(d) subject to section 13(1)*(d)*(iii), a condition assessment of the immovable asset;

(e) the maintenance activities required and the total and true cost of the maintenance activities identified; and

(f) a disposal strategy and management plan.

Minimum contents of user immovable asset management plan

8. A user immovable asset management plan must consist of at least

(a) a strategic needs assessment;

(b) an acquisition plan;

(c) an operations plan; and

(d) an immovable asset surrender plan.

Submission of immovable asset management plan

9. (1) The accounting officer of a custodian must, on a date determined by the relevant treasury, submit a copy of its custodian immovable assent management plan to that treasury.

(2) The accounting officer of a user must—

(a) on a date determined by the relevant treasury, submit its user immovable asset management plan as part of its strategic plan to that treasury; and

(b) on a date determined by the custodian, submit a copy of its user immovable asset management plan to the relevant custodian.

Status of user immovable asset management plan

10. A user immovable asset management plan—

(a) is the principal immovable asset strategic planning instrument which guides and informs all immovable asset management decisions by the user;

(b) binds the user in the exercise of its executive authority, except to the extent of any inconsistency between a user immovable asset management plan and this Act or the immovable asset management guidelines published by the Minister under section 19, in which case this Act or those guidelines prevail.

User to give effect to user immovable asset management plan

11. A user must give effect to its user immovable asset management plan and conduct immovable asset management in a manner which is consistent with this Act and its user immovable asset management plan.

Revision and amendment of immovable asset management plan

12. (1) A user—

(a) must annually revise its user immovable asset management plan after its budget allocations have been finalised by the relevant treasury and must incorporate the revised user immovable asset management plan into its strategic plan;

(b) may amend its user immovable asset management plan in accordance with the prescribed process; and

(c) must submit its revised and amended user immovable asset management plan to the relevant custodian as prescribed.

(2) A custodian must annually revise its custodian immovable asset management plan after receipt of the revised and amended user immovable asset management plan or where other factors necessitate such revision.

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Functions of custodian and accounting officer of custodian

13. (1) The accounting officer of a custodian must, for all immovable assets for which that custodian is responsible—

(a) compile, in accordance with section 7, and with due regard to the user immovable asset management plans submitted in terms of section 9, a custodian immovable asset management plan that forms part of the strategic plan of that custodian;

(b) submit the custodian immovable asset management plan to the relevant treasury as part of its strategic plan;

(c) advise the relevant treasury on the immovable asset management plans of users;

(d) ensure that all activities that are associated with common law ownership are executed, including—

(i) managing an immovable asset throughout its life cycle;

(ii) assessing the performance of the immovable asset;

(iii) assessing the condition of the immovable asset at least every fifth year;

(iv) identifying the effect of the condition of an immovable asset on service delivery ability;

(v) determining the maintenance required to return the immovable asset to the state in which it would provide the most effective service;

(vi) estimating the cost of the maintenance activities identified;

(e) establish and execute a performance measurement system as prescribed.

(2) The accounting officer of a custodian must assist a user by making available information pertaining to an immovable asset used by that user as well as suitable alternatives, including analysing that information in a manner that would enable the user to make informed and effective decisions on the use and management of that immovable asset.

(3) A custodian may dispose of a surplus immovable asset—

(a) by the allocation of that immovable asset to another user; or

(b) subject to the State Land Disposal Act, 1961 (Act No. 48 of 1961), and any provincial land administration law, by the sale, lease, exchange or donation of that immovable asset or the surrender of a lease.

Functions of accounting officer of user

14. (1) The accounting officer of a user or custodian in its capacity as a user must, for all the immovable assets that it uses or intends to use—

(a) compile, in accordance with section 8, a user immovable asset management plan that will form part of the strategic plan of that user;

(b) jointly conduct the immovable asset strategic planning process with the relevant custodian;

(c) submit its user immovable asset management plan to the relevant treasury in accordance with section 9;

(d) submit a copy of the user immovable asset management plan to the relevant custodian in accordance with section 9; and

(e) establish and execute a performance measurement system as prescribed.

(2) The accounting officer of a user must surrender a surplus immovable asset under its control to the relevant custodian.

Exemptions

15. The Minister may, by notice in the *Gazette*, in respect of certain immovable asets or categories of immovable assets, exempt any organ of state or part thereof to which this Act applies from any provision of this Act for a period determined in the notice.

Compliance

16. A standard issued by the Minister in terms of this Act is compulsory and the Minister may incorporate any guideline issued in terms of this Act or any best practice or part thereof into that standard.

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SCHEDULE

(Section 1)

(a) Eastern Cape Land Disposal Act, 2000 (Act No. 7 of 2000);
(b) Free State Land Administration Act, 1998 (Act No. 1 of 1998);
(c) Gauteng Land Administration Act, 1996 (Act No. 11 of 1996);
(d) KwaZulu-Natal Land Administration Act, 2003 (Act No. 3 of 2003);
(e) Mpumalanga Land Administration Act, 1998 (Act No. 5 of 1998);
(f) Northern Province Land Administration Act, 1999 (Act No. 6 of 1999);
(g) Northern Cape Land Administration Act, 2002 (Act No. 6 of 2002);
(h) North West Land Administration Act, 2001 (Act No. 4 of 2001);
(i) Western Cape Land Administration Act, 1998 (Act No. 6 of 1998).

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MEMORANDUM ON THE OBJECTS OF THE GOVERNMENT IMMOVABLE ASSET MANAGEMENT BILL, 2006

1. BACKGROUND

1.1 The Government Immovable Asset Management Bill, 2006 (the Bill), seeks to introduce measures to ensure a uniform framework for the management of immovable assets that are held and used by a national or a provincial department and its coordination with the service delivery objectives of a national or a provincial department.

1.2 Historically, immovable asset management practices in government resulted in immovable assets slipping into disrepair due to improper funding and maintenance. In general, the culture of replacement rather than maintenance eventually cost government significantly more than what ongoing preventative maintenance would have cost. These practices in government were the result of a non-uniform governance framework and the lack of monitoring and evaluation systems.

1.3 The Government Immovable Asset Management Bill, 2006, outlines a framework of basic principles in accordance with which national and provincial government departments must manage the immovable assets that they use in delivering the services that they are mandated to deliver.

1.4 In drafting the Bill, the Department of Public Works took past experiences into account namely—

- The lessons learnt from managing immovable assets owned by government through history;
- The lessons learnt from implementing the Construction Industry Development Board Act, 2000 (Act No. 38 of 2000), incrementally for government departments.

2. OBJECTS

The Bill seeks to—

(i) limit its scope of application to national and provincial government;

(ii) determine the following objects:

(a) Providing a uniform immovable asset management framework to promote accountability and transparency within government;

(b) ensuring effective immovable asset management within government;

(c) ensuring alignment of use of immovable assets with service delivery objectives of a national or provincial department and the efficient utilisation of immovable assets;

(d) optimising the cost of service delivery through prudent allocation of limited state resources in relation to—

- the accountability for capital and recurrent works;
- the acquisition, re-use and disposal of an immovable asset;
- the maintenance of existing immovable assets;
- protecting the environment and the cultural and historic heritage; and
- improving health and safety in the working environment;

(iii) clarify the role of custodians and users in relation to immovable assets owned or leased by the state;

(iv) outline the principles of immovable asset management to be maintained by government;

(v) impose a duty on the accounting officer of every user and custodian to submit immovable asset management plans in coordination with the Public Finance Management Act, 1999 (Act No. 1 of 1999), and the Public Service Act, 1994 (Act No. 104 of 1994);

(vi) determine the minimum content of immovable asset management plans;

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(vii) determine the legal status of an immovable asset management plan;

(viii) provide for the administration of the Act, such as exemptions, delegation and assignment, offences and penalties, as well as for the Minister to issue standards and guidelines for immovable asset management, with the concurrence of the Ministers of Finance and Public Service (the legal status of these standards and guidelines are also determined); and

(ix) enable the Minister to make regulations, and to regulate the matter in the transitional period by suspending requirements if and where necessary.

3. BODIES CONSULTED

The Department consulted with all the national and the provincial departments on the policy and incorporated the comments in the policy and draft legislation. In particular, the Department consulted with National Treasury to ensure consistency with the PFMA and its regulations, National Treasury's Asset Management Guideline and the Infrastructure Delivery Improvement Programme.

4. FINANCIAL IMPLICATIONS FOR STATE

Whilst in the short term this Act will have financial implications for the various departments, whether custodian or user, in the long term it will have the effect of a saving for the State as it is intended to lead to improved management and maintenance of government immovable assets, which will render a better return on the State's investment in immovable assets.

5. PARLIAMENTARY PROCEDURE

5.1 The State Law Advisers and the Department of Public Works are of the opinion that this Bill must be dealt with in accordance with the procedure established by section 75 of the Constitution since it contains no provision to which the procedure set out in section 74 or 76 of the Constitution applies.

5.2 The State Law Advisers are of the opinion that it is not necessary to refer this Bill to the National House of Traditional Leaders in terms of section 18(1)*(a)* of the Traditional Leadership and Governance Framework Act, 2003 (Act No. 41 of 2003), since it does not contain provisions pertaining to customary law or customs of traditional communities.

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